



Management of Cultural Resources at Department of Energy Facilities

BACKGROUND:

The Department of Energy (DOE) recognizes the cultural and scientific value of the resources that may exist on the properties under its management or over which it has direct or indirect control. Therefore, DOE has implemented a program to protect these resources and ensure that all DOE facilities and programs comply with all existing cultural resource executive orders, laws, and regulations. Thus, DOE is able to preserve, protect, and perpetuate cultural resources for future generations.

STATUTES:

[Antiquities Act of 1906](#)

[Historic Sites Act of 1935](#)

[Reservoir Salvage Act of 1960](#)

[National Historic Preservation Act of 1966, as amended \(NHPA\)](#)

[National Environmental Policy Act of 1969](#)

[Archaeological and Historic Preservation Act of 1974](#)

[American Folklife Preservation Act of 1976](#)

[American Indian Religious Freedom Act of 1978 \(AIRFA\)](#)

[Archaeological Resources Protection Act of 1979, as amended \(ARPA\)](#)

[Abandoned Shipwreck Act of 1987](#)

[Native American Graves Protection and Repatriation Act of 1990 \(NAGPRA\)](#)

EXECUTIVE ORDERS AND MEMORANDA:

[Executive Memorandum. Government-to-Government Relations with Native Americans Tribal Governments \(April 29, 1994\)](#)

[Executive Order \(EO\) 13007, *Indian Sacred Sites* \(May 24, 1996\)](#)

[EO 13175, *Consultation and Coordination with Indian Tribal Governments* \(November 6, 2000\) \(superseeded EO 13084 of the same title\)](#)

REGULATIONS:

[36 CFR 60: National Register of Historic Places](#)

[36 CFR 63: Determination of Eligibility for Inclusion in the National Register of Historic Places](#)

[36 CFR 65: National Historic Landmarks Program](#)

[36 CFR 67: The Secretary of the Interior's Standards for Rehabilitation](#)

[36 CFR 68: The Secretary of the Interior's Standards for the Treatment of Historic Properties](#)

[36 CFR 78: Waiver of Federal Responsibilities under Section 110 of the National Historic Preservation Act](#)

[36 CFR 79: Curation of Federally-Owned and Administered Archeological Collections](#)

[36 CFR 800: Protection of Historic Properties](#)

[43 CFR 7: Protection of Archaeological Resources](#)

[43 CFR 10: Native American Graves Protection and Repatriation Act Regulations](#)

REFERENCES:

U.S. Department of Energy

- Office of Environment, Safety and Health. *Department of Energy Management of Cultural Resources*. DOE P 141.1. May 2, 2001.
- Office of Intergovernmental and Public Accountability (EM-11). *A Guide for DOE Employees. Working with Indian Tribal Nations*. December 2000.
- Office of Congressional and Intergovernmental Affairs. *American Indian and Alaska Native Tribal Government Policy*. October 2000. (Implemented by DOE Order 1230.2)
- Office of Environmental Policy and Assistance. *Environmental Guidelines for Development of Cultural Resource Management Plans*. DOE/EH-0501. August 1995.
- Office of Environmental Guidance Memorandum. *National Historic Preservation Act Amendments of 1992*. August 26, 1993.
- Office of Environmental Guidance Memorandum. *The Native American Graves Protection and Repatriation Act*. July 30, 1992.
- Office of Congressional and Intergovernmental Affairs. *American Indian Tribal Government Policy*. DOE Order 1230.2. April 1992.
- Office of Environmental Guidance Memorandum. *Management of Cultural Resources at Department of Energy Facilities*. February 23, 1990.

U.S. Department of Interior, National Park Service

- *Illustrated Guidelines for Rehabilitating Historic Buildings*. 2001.
- *The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act*. April 24, 1998 (63 FR 20495).
- Weeks, Kay D. and Anne E. Grimmer. *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*. 1995.
- National Register Bulletin Number 38: Patricia L. Parker and Thomas F. King. *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. 1990.
- *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines*, September 29, 1983 (48 FR 44716)¹.

Definition of Cultural Resources

Cultural resources include “historic properties” as defined in the National Historic Preservation Act (NHPA), “archaeological resources” as defined in the Archaeological Resources Protection Act (ARPA), and “cultural items” as defined in the Native American Graves Protection and Repatriation Act (NAGPRA).

Cultural resources, thus, include, but are not limited to, the following broad range of items and locations:

- ❑ archaeological materials (i.e., artifacts) and sites that date to the prehistoric, historic, and ethnohistoric periods that are currently located on, or are buried beneath, the ground surface;
- ❑ standing structures and/or their component parts that are over 50 years of age or are important because they represent a major historical theme or era (e.g., the Manhattan Project, the Cold War);
- ❑ structures that have an important technological, architectural, or local significance;

¹ The National Park Service has updated portions of the Standards and Guidelines but has not republished them since 1983. This link leads to an updated version of the 1983 document.

- ❑ cultural and natural places, select natural resources, and sacred objects that have importance for Native Americans; and
- ❑ American folklife traditions and arts.

DOE's Policy on Management of Cultural Resources

Preservation and protection of America's cultural heritage are important functions and responsibilities of DOE for properties under its control or jurisdiction. Federal laws and regulations require DOE to identify, evaluate, and manage such cultural resources. DOE's policy on management of cultural resources ensures that DOE maintains a program that reflects the spirit and intent of the cultural resources legislative mandates. The purpose of the Policy is twofold:

- ❑ to guarantee that DOE programs, including the National Nuclear Security Administration (NNSA), and field elements integrate management of cultural resources into their missions and activities and
- ❑ to raise the level of awareness and accountability among DOE contractors (including those of the NNSA) concerning the importance of DOE's cultural resource-related legal and trust responsibilities.

DOE also has an *American Indian and Alaska Native Tribal Government Policy*, implemented by DOE Order 1230.2. This policy, revised in 2000, sets forth the principles to be followed by DOE to effectively implement a government-to-government relationship with American Indian and Alaska Native tribal governments.

Obtaining Information about the Management of Cultural Resources

Information concerning the cultural resources that may exist on DOE facilities, including those administered by the NNSA, or on properties that may be affected by DOE programs can be obtained by contacting the DOE Cultural Resources Point of Contact in the appropriate DOE Operations Office. Additional information can be obtained by contacting the DOE Federal Preservation Officer (FPO), the [State Historic Preservation Officer \(SHPO\)](#) in each state or territory, local historical organizations, the [Tribal Historic Preservation Officer \(THPO\)](#), [American Indian tribes](#) and other [Native American organizations](#), or the [Advisory Council on Historic Preservation \(ACHP\)](#).

Protecting Cultural Resources on DOE Property

Cultural resource management laws and their implementing regulations require operators of facilities owned by or leased from DOE to develop programs for the identification, evaluation, nomination, and protection of cultural resources. The operators of such facilities are also required to mitigate negative impacts to those resources located on the properties under their management. DOE programs providing permits and/or allocating funding for activities that may affect cultural resources on non-DOE owned land are also required to comply with all cultural resource management laws and regulations.

DOE facility and program managers must consult the SHPO in their state concerning specific compliance requirements and cultural resource preservation planning. In some cases consultation may also be required with the ACHP, THPO, appropriate local historical organizations, affected stakeholders, and/or Native American tribes and organizations. The 1992 amendments to NHPA expanded the role of Native Americans, including Native Hawaiians, in preservation activities. To ensure appropriate interactions with Native Americans that may be impacted by the Department's activities, DOE Order 1230.2 delineates the specific responsibilities of various Headquarters and field elements.

DOE's Cultural Resource Management Program

A consolidated, proactive DOE cultural resource management program (CRMP) that is responsive to cultural resource laws and implementing regulations should be developed and implemented at each DOE facility and for each DOE program, including NNSA. The responsible DOE managers must ensure the following cultural resource management requirements are met:

- ❑ Prepare a CRMP that identifies the individual facility or program strategies for meeting the program elements described below. Follow the guidance in DOE/EH-0501 when preparing and making periodic revisions to this plan.
- ❑ Employ professionally trained cultural resource management personnel to prepare CRMPs; determine the need for and scope of field studies; carry out field, laboratory, and archival studies; and evaluate the potential National Register significance of identified cultural resources. (For guidance in selecting qualified personnel see *36 CFR 61, Appendix A, Department of Interior*,

National Park Service, Professional Qualifications Standards.)

- ❑ Include federal and state agency officials; SHPOs; THPOs, Native American tribes, or Native American organizations; ACHP; and interested organizations or persons (e.g., local governments; applicants for federal assistance, permits, or licenses; stakeholders) in the Section 106 consultation process as specified in NHPA and ARPA and their implementing regulations.
- ❑ Facilitate public involvement and participation by consulting with federal, state, and local preservation groups and Native American groups regarding preservation planning decisions.
- ❑ Identify places, natural resources, and objects of sacred and religious importance to Native Americans as defined by designated tribal representatives. Consult with Native Americans about the potential impacts of proposed DOE actions on those resources and areas of cultural or religious concern to them. Avoid unnecessary interference with traditional religious practices in accordance with DOE's American Indian and Alaska Native Tribal Government Policy as implemented by DOE Order 1230.2.
- ❑ Protect cultural resource sites and, as appropriate, monitor unreported sites. These proactive actions should include compliance with NHPA and ARPA.
- ❑ Develop a systematic program to inventory surface and sub-surface cultural resource sites at each DOE facility according to ARPA and Section 110 of NHPA. Inventories should include buildings or sites less than 50 years of age that may have significant historical importance.
- ❑ Use the National Register of Historic Places criteria in 36 *CFR* 60 to evaluate the significance of the identified cultural resources.
- ❑ Establish a permitting system for the controlled excavation, removal, and protection of cultural resources during scientific and compliance-oriented field projects as required by ARPA.
- ❑ Include sufficient lead time in project planning to meet requirements for field surveys and excavations for cultural resources to comply with Section 106 of the NHPA. The time necessary to complete field activities and prepare compliance documents that meet federal standards should be factored into the scheduling of projects that involve ground disturbing activities or modifications to standing structures that are more than 50 years old or those younger than 50

years that are of significant historical importance.

- ❑ Budget sufficient funds to support cultural resource compliance actions and programs. (See related EH-41 Information Briefs on ARPA and NHPA.)
- ❑ Protect information concerning the exact location of sensitive cultural resource sites and prohibit the dissemination of such information to the general public in order to prevent looting and vandalism.
- ❑ Curate cultural resource collections and records in accordance with the guidance provided in 36 *CFR* 79. The public distribution of compliance-related studies and reports must comply with NHPA.
- ❑ Identify and repatriate human remains and associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony in collections created as a result of past DOE activities as well as from current and proposed activities in accordance with NAGPRA.
- ❑ Promptly notify the DOE FPO of unanticipated findings including the inadvertent discovery of human remains and other objects protected by NAGPRA.

DOE Managers Must Consider Cultural Resources in Planning

DOE managers must follow the planning considerations discussed above whenever direct or indirect DOE activities result in ground disturbance. Those plans must also be followed when activities may result in alterations to standing structures that are more than 50 years old or to those that are less than 50 years old but are important because they represent a major historical theme or era. Managers must ensure compliance for all DOE activities whether or not DOE owns the properties. DOE activities include, but are not limited to, day-to-day operations; new construction; Resource Conservation and Recovery Act (RCRA)- and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)-related cleanup actions; and DOE-licensed and -funded actions. Managers should also ensure that DOE and contractor personnel are aware of amendments to cultural resource statutes (e.g., the 1992 amendments to NHPA) and the development of or revision to cultural resources regulations (e.g., those issued to implement NAGPRA).

Penalties for Failing to Protect Cultural Resources

Failure to protect both known and unrecorded cultural resource sites and materials can lead to criminal and civil penalties, including up to five years imprisonment and a fine of up to \$250,000 per violation, as well as the forfeiture of all equipment and vehicles used to facilitate a violation. [See ARPA and the Omnibus Crime Control Act of 1984 (PL 98-596).]

Questions of policy or questions requiring policy decisions will not be dealt with in EH-412 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to [Lois Thompson](#), Air, Water and Radiation Division, EH-412, (202) 586-9581, fax (202) 586-3915 or lois.thompson@eh.doe.gov.

